IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.3567 OF 2005

Prakash Waman Dhodhade & anr. ... Applicants.
Versus.
The State of Maharashtra. ... Respondent.

Shri Rajiv Patil for the Applicants.

Shri R.Y.Mirza, A.P.P.for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 24th June, 2005.

P.C.:

1. Heard Shri Patil for the Applicants and the learned

A.P.P. for the State.

2. The offence alleged against the Applicants is under section 302, 323, 506 and 34 of the Indian Penal Code. The F.I.R. is filed by one H.K.Thakare at 3.00 p.m. on 22nd March 2005. He reported that a dead body of one Balu Chandrakant Hadal was found. Initially it was registered as an A.D.R., but later on it was treated as a F.I.R. The case of the prosecution is that one Jayashree and three others are the witnesses to the assault by the Applicants on the deceased. Jayashree is a cousin of the deceased. The other witness Balkrishna is also a cousin of the deceased. The third witness Chaitibai is aunt of the deceased and the fourth witness

Kalia is the brother of the deceased. The case of the prosecution is that after the investigation commenced on 22nd March 2005, the witness Jayashree stated before Police that at about 5.00 p.m. on 21st March 2005, she saw the accused assaulting the deceased. She stated that her brother Balkrishna was along with her at that time. The witness Kalia who is the brother of the deceased has not deposed anything about the assault. However, he has stated that there was some dispute between the family of the deceased and the family of the Applicant No.2.

3. Even according to the prosecution case, the cousin of the deceased had witnessed the incident at 5.00 p.m. on 21st March 2005, but she did not lodge any complaint due to the fear. The case of the Applicant is that on 22nd March 2005 the Applicant No.2 deposed as a witness in Sessions Case No.365 of 2001 in the Court of the Additional Sessions Judge at Palghar. The deceased is reportedly expired on 22nd March 2005.

4. After having heard the learned Counsel appearing for the parties, I find that the silence of the two eye witnesses who are related to the deceased is very unusual. The case of the Applicants is that the Applicant No.2 attended the Court of the Additional Sessions Judge on 22nd March 2005. The assault has taken place according to the eye Jayashree at about 5.00

p.m. on 21st March 2005. The deceased expired on 22nd March 2005.

5. Now the investigation is complete. The charge sheet has been filed. The brother of the deceased has stated before the Police regarding the dispute between the two families. As stated earlier, Jayashree who is closely related to the deceased kept quiet and has not come forward to file a complaint. These are the circumstances which according to me make out a case for grant of bail.

6. Accordingly the following order is passed:

(i) The Applicants shall be enlarged on bail subject to condition of filing personal bond in the sum of Rs.10,000/- each with one or two local sureties. The Bail is granted subject to condition that the Applicants shall not make any effort to influence or pressurise the prosecution witnesses and that they will not tamper with the prosecution evidence.

(ii) The Applicant will cooperate with the learned trial Judge for early disposal of the trial.

(iii) The application is disposed of in the above terms.

(iv) Parties to act on an authenticated copy of this order.

Judge.